

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Simon Wang	Team: Team # 1	CCRB Case #: 201010333	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 06/19/2010 8:30 PM	Location of Incident: intersection of Columbia Street and Bay Street	Precinct: 76	18 Mo. SOL 12/19/2011	EO SOL 12/19/2011	
Date/Time CV Reported Thu, 07/29/2010 2:01 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 07/29/2010 2:01 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Tsz Kwan	07464	935140	076 PCT
2. SGT Patrick Quigley	00005	934081	076 PCT
3. POM Kensington Cunningham	06374	931616	076 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Tsz Kwan	Force: PO Tsz Kwan used physical force against § 87(2)(b)	
B.SGT Patrick Quigley	Off. Language: Sgt. Patrick Quigley made remarks to § 87(2)(b) based upon his race and sexual orientation.	
C.POM Kensington Cunningham	Off. Language: PO Kensington Cunningham made remarks to § 87(2)(b) based upon his race and sexual orientation.	

Case Summary

On July 29, 2010, § 87(2)(b) filed the following complaint with the CCRB. On June 19, 2010, § 87(2)(b) was at a family function inside Red Hook Recreational Area at the intersection of Columbia Street and Bay Street in Brooklyn. Sgt. Patrick Quigley, PO Tsz Kwan and PO Kensington Cunningham of the 76th Precinct suspected § 87(2)(b) and members of his family of possessing open alcohol containers. The following allegations resulted:

- **Allegation A – Physical Force:** PO Tsz Kwan used physical force against § 87(2)(b)
- **Allegation B – Offensive Language:** Sgt. Patrick Quigley made remarks to § 87(2)(b) based upon his race and sexual orientation.
- **Allegation C – Offensive Language:** PO Kensington Cunningham made remarks to § 87(2)(b) based upon his race and sexual orientation. § 87(2)(g)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) § 87(2)(b)

On August 20, 2010, § 87(2)(b) was interviewed at the CCRB. On September 14, 2010, § 87(2)(b) filed a notice of claim with The City of New York concerning this incident. He reiterated his complaint in that notice. § 87(2)(g)

On June 19, 2010, at approximately 8:30 PM, § 87(2)(b) was at a barbeque at Red Hook Park in Brooklyn with his domestic partner § 87(2)(b) and § 87(2)(b)'s family. § 87(2)(b) was wearing a sleeveless tee-shirt and shorts which had no pockets. He was not holding anything in his hands.

Approximately five to six patrol cars arrived suddenly, and approximately eight police officers exited. They began to approach people in the park asking for ID. An officer identified by the investigation as PO Tsz Kwan of the 76th Precinct (described as an Asian or Hispanic male, 5'6", 30 years old) approached § 87(2)(b) and asked him for ID. § 87(2)(b) complied and provided his ID. At the same time, two officers identified by the investigation as Sgt. Patrick Quigley (described as a white male, 6'0", muscular, blonde) and PO Kensington Cunningham (described as a black male, 6'0", muscular) approached § 87(2)(b). § 87(2)(b) was not close enough to hear what occurred, but he was told later that the officers approached and asked for ID. PO Kwan told § 87(2)(b) that if he did not have a warrant he would be given a summons, or perhaps he would be taken to the stationhouse for 15 minutes and be allowed to return to the barbeque. PO Kwan then left with § 87(2)(b)'s ID and went to a patrol car. In his notice of claim, § 87(2)(b) also alleged that while PO Kwan was gone, other unspecified officers emptied the ice-coolers of civilians in the area and began to throw around the food and beverages.

PO Kwan returned and told § 87(2)(b) that he had found a warrant for an open container summons from 2007. § 87(2)(b) asked, "What does that mean? I thought that was dismissed."

PO Kwan said, "We'll just have to wait and see." § 87(2)(b) then asked, "What's going to happen now?" PO Kwan told him that he would be taken to the stationhouse where the situation would be clarified. He stated that § 87(2)(b) would be released in about 45 minutes. § 87(2)(b) asked the officers not to embarrass him in front of his family, and stated that he would go into the patrol car without being handcuffed. PO Kwan agreed, and led § 87(2)(b) towards the patrol car. As they were walking towards the patrol car, PO Kwan abruptly reached for the front of § 87(2)(b)'s waistband area. § 87(2)(b) believed that the officer was reaching for his groin and said, "Don't touch me." PO Kwan and PO Cunningham each grabbed one of § 87(2)(b)'s arms and forced him against the trunk of the patrol car. § 87(2)(b) did not resist the officers. PO Kwan slammed § 87(2)(b)'s against the trunk two or three times by pushing § 87(2)(b)'s arms, which were behind his back, causing § 87(2)(b)'s head to make contact with the trunk. § 87(2)(b) stated that the officers also shook him "like a rag-doll." This did not cause any injuries to § 87(2)(b). In his notice of claim, § 87(2)(b) further alleged that at this point, PO Cunningham and Sgt. Quigley stated to him, "You stupid black piece of shit, now you going down." § 87(2)(b) was handcuffed while placed against the trunk.

Sgt. Quigley and PO Cunningham picked up § 87(2)(b) by the waist such that his feet were off the ground, and threw him head first and face-down into the backseat of the patrol car. § 87(2)(b)'s face made contact with the back of the front seats as he was thrown in. Sgt. Quigley and PO Cunningham then entered the back seat with the door open. They both forced themselves on top of § 87(2)(b) each placing one knee into either side of § 87(2)(b)'s lower back. One of them placed his forearm against the back of § 87(2)(b)'s neck. Both officers then said, "You black piece of shit. You black gay piece of shit. You black bitch. You're going to get it now." The officers also threatened to "fuck with" § 87(2)(b)'s family. § 87(2)(b) stated that he is the victim of past sexual assaults, and had a deeply negative reaction to the physical contact with the officers. § 87(2)(b) stated that that type of contact "sets me off into a frenzy, like a panic." However, he denied being violent. § 87(2)(b) stated that both officers were speaking in that fashion. The officers then got off of § 87(2)(b) and drove him to the 76th Precinct stationhouse.

At the stationhouse, PO Kwan did the arrest processing. PO Kwan asked § 87(2)(b) to pull down his shorts. § 87(2)(b) refused, but pulled open his shorts slightly to show that he was wearing boxer-shorts underneath, and had no rope around his waist. That response satisfied PO Kwan and he did not have to remove his shorts. § 87(2)(b) was charged with resisting arrest.

Witness: § 87(2)(b)

- § 87(2)(b) is § 87(2)(b)'s domestic partner.

On August 20, 2010, § 87(2)(b) was interviewed at the CCRB after he arrived with § 87(2)(b). His statement is summarized below, with discrepancies from § 87(2)(b)'s statement noted.

Alcohol was served at the party, and § 87(2)(b) consumed four beers over the course of four hours. § 87(2)(b) had an empty white foam cup in his hands. Several individuals who were part of another group having a barbeque were smoking marijuana approximately ten feet away from where § 87(2)(b) was standing. Other individuals were drinking alcohol from bottles which were in plain view.

PO Cunningham, asked § 87(2)(b) what he had in his cup. § 87(2)(b) showed that he did not have anything in his cup. PO Cunningham stated that he could smell the alcohol and that, “Looks like you got alcohol in there.” PO Cunningham asked them all to produce ID because they were getting summonses for open containers. When the officers returned after searching for warrants, PO Cunningham told § 87(2)(b) he would get a summons while § 87(2)(b) would get arrested. PO Cunningham ordered § 87(2)(b) to turn around, when he complied, PO Cunningham grabbed him by the arms and placed him against the hood of a car. § 87(2)(b) was held down against the car with his face touching the car. § 87(2)(b) protested that he did not have a warrant and raised his head to speak. PO Cunningham and PO Kwan were attempting to handcuff him, but had difficulty because he was resisting. They had to push him down repeatedly by the back of the neck. The officers were using “a little force” but did not deliberately slam him onto the car. After § 87(2)(b) was handcuffed, Sgt. Quigley handed § 87(2)(b) a summons for open alcohol container. The officers escorted § 87(2)(b) to the patrol car and he entered the rear seat of the patrol car voluntarily. Only one officer sat in the rear seat next to § 87(2)(b). There was no apparent commotion in the rear seat of the patrol car before driving off.

Some time later, the three police officers returned to the location, but did not speak to anyone. § 87(2)(b) stated that after § 87(2)(b) was released, his family members told him that his arresting officers returned to the park.

NYPD Statements:

Subject Officer: PO TSZ KWAN

- *PO Kwan* § 87(2)(b)
- *On June 19, 2010, PO Kwan worked from 5:50 p.m. until 2:25 a.m., assigned to patrol vehicle § 87(2)(b) an unmarked, black Impala, in uniform, with Sgt. Quigley and PO Cunningham.*

Memo Book

PO Kwan read the following entries in his memo book regarding this incident: “8:36 PM, one under, corner of Bay and Columbia Street. 8:45 PM to 10:52 AM administrative at the stationhouse.”

CCRB Statement

On November 24, 2010, PO Tsz Kwan of the 76th Precinct was interviewed at the CCRB.

On June 19, 2010, at approximately 8:30 p.m., PO Kwan, Sgt. Quigley and PO Cunningham drove by Red Hook Park in Brooklyn and saw a large crowd gathered. The officers stopped near the intersection of Bay Street and Columbia Street. PO Kwan exited the vehicle and “scanned” the crowd, at which point he saw § 87(2)(b) and a second male individual pouring liquid from a glass bottle of wine into smaller cups. PO Kwan approached § 87(2)(b) and the second individual, asked them for ID, and informed them that they would be issued open container summonses. § 87(2)(b) seemed unhappy but was behaving calmly and compliantly. PO Kwan did not recall if his fellow officers were in the immediate vicinity upon this initial approach, but stated that the three officers had “spread out” to approach the crowd.

PO Kwan ran the two civilians' ID's for warrants. The second individual had no open warrants, so he was issued the open container summons and released. PO Kwan stated that PO Cunningham probably issued this summons, as he did not do so himself and Sgt. Quigley would not issue summonses. However, § 87(2)(b) had an open warrant, so PO Kwan informed him that he would be placed under arrest. Because § 87(2)(b) was being cooperative, PO Kwan decided not to handcuff him in front of the people gathered in the park (whom PO Kwan took to be § 87(2)(b)'s friends and family), and instead escorted § 87(2)(b) to the police vehicle. A second officer (PO Kwan could not recall which) was present at this point, and the two officers stood at either side of § 87(2)(b) as he was escorted to the vehicle.

PO Kwan and § 87(2)(b) stood in front of the hood of the car, and PO Kwan informed § 87(2)(b) that he would need to be handcuffed and transported to the precinct stationhouse. § 87(2)(b) protested, saying that he would go to the stationhouse but did not want to be handcuffed. § 87(2)(b)'s behavior at this point was somewhat agitated, but he did not do anything physically aggressive or threatening. PO Kwan informed § 87(2)(b) that he would have to be handcuffed at least twice, and § 87(2)(b) continued to refuse and protest. § 87(2)(b) had placed his hands on top of the hood of the police vehicle; PO Kwan grabbed his left arm and forcibly moved it behind his back, while PO Cunningham did the same with § 87(2)(b)'s right arm. § 87(2)(b) resisted briefly by stiffening his arms. PO Kwan stated that when he moved § 87(2)(b)'s arm, it caused § 87(2)(b)'s upper body to make contact with the hood of the police vehicle; however, neither officer ever slammed or pushed § 87(2)(b) against the vehicle. Once he was cuffed, § 87(2)(b) became fully compliant and was placed inside the police vehicle with no difficulty. The officers did not lift § 87(2)(b) off the ground in order to place him in the vehicle.

PO Kwan stated that, though he could smell alcohol on § 87(2)(b)'s breath, he did not seem overly intoxicated. PO Kwan stated that neither he nor any other officer ever called § 87(2)(b) a "black piece of shit" or a "black gay piece of shit," nor did any officers threaten to "fuck with" § 87(2)(b) or his family.

Officers not Interviewed

Sgt. Quigley and PO Cunningham were not interviewed for this investigation because their statements would not alter the recommended dispositions of the allegations.

NYPD Documents

Command Log

According to § 87(2)(b)'s arrest entry in the command log of the 76th Precinct, § 87(2)(b) was in normal physical condition. He was transported to Brooklyn Central Booking at 4:15 AM.

Roll Call

According to the roll call from the 76th Precinct, PO Kwan, PO Cunningham and Sgt. Quigley were assigned to patrol Red Hook Park.

§ 87(2)(a) 160.50, § 87(2)(b)

Status of Civil Proceedings

- § 87(2)(b) filed a Notice of Claim with the City of New York on September 14, 2010, claiming false arrest and imprisonment, negligent performance of police duties, violation of constitutional rights and abuse of process. (encl. [5a-c]).

Civilian Criminal History

- As of February 7, 2011, Office of Court Administration records reveal no criminal convictions for § 87(2)(b).

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b).

Subject Officer CCRB Histories

- PO Kwan has been a member of the service for six years and there are four substantiated CCRB allegations against him (encl. [1a]).
 - The board substantiated allegations of illegal entry into a residence, physical force, illegal frisk and threat of arrest in CCRB case number 200711532. The board recommended charges against PO Kwan. The disposition by the police department is currently pending.
- PO Cunningham has been a member of the service for eight years and there are no substantiated CCRB allegations against him (encl. [1b]).
- Sgt. Quigley has been a member of the service for seven years and there are no substantiated CCRB allegations against him (encl. [1c]).

Conclusion

Identification of Subject Officers

PO Kwan acknowledged that he interacted with § 87(2)(b) and identified PO Cunningham and Sgt. Quigley as his partners. § 87(2)(b) provided accurate descriptions of the officers and identified PO Cunningham and Sgt. Quigley as the officers who used offensive and discourteous language towards him.

Investigative Findings and Recommendations

Allegation A – Physical Force: PO Tsz Kwan used physical force against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b) countered § 87(2)(b)'s allegation that he was deliberately slammed against a vehicle by PO Kwan as he was being handcuffed. Instead § 87(2)(b) stated that § 87(2)(b) offered passive resistance to being handcuffed, making it necessary for officers to use what § 87(2)(b) described as “a little force” in pushing § 87(2)(b)'s head down against the vehicle. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)
PO Kwan provided a statement that was remarkably consistent with § 87(2)(b)'s. PO Kwan stated that § 87(2)(b) offered minor passive resistance, and denied that § 87(2)(b) was ever slammed or pushed against the vehicle. § 87(2)(b), § 87(2)(g)

Allegation B – Offensive Language: Sgt. Patrick Quigley made remarks to § 87(2)(b) based upon his race and sexual orientation.

Allegation C – Offensive Language: PO Kensington Cunningham made remarks to § 87(2)(b) based upon his race and sexual orientation.

§ 87(2)(b) claimed that he was picked up from the ground and thrown head-first into the back of the patrol car, where Sgt. Quigley and PO Cunningham lay on top of him while uttering obscene language laced with racial and homophobic phrases. § 87(2)(b) provided a contradictory version of these allegations in his notice of claim, where he alleged that the comments were made as he was being handcuffed while standing outside. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) omitted any mention of hearing any such offensive comments while § 87(2)(b) was being handcuffed. § 87(2)(b) stated that § 87(2)(b) was then placed in the rear of the patrol car without incident or commotion and only one officer joined § 87(2)(b) in the back seat, § 87(2)(b), § 87(2)(g)

§ 87(2)(b) PO Kwan's statement was entirely consistent with § 87(2)(b)s, and he also described § 87(2)(b) being placed in the patrol car without incident. § 87(2)(g)

Team: _____ 1 _____

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Investigator:	_____	Simon Wang	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date